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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 DAVID AND MARTINE MEDNANSKY,
12 Plaintiff,
13 vs.
14 U.S.D.A. FOREST SERVICE
15 EMPLOYEES WILLIAM METZ, OWEN
16 C. MARTIN, RANDY MOORE, RITU
17 AHUJA, MARLENE FINLEY, AND
Defendant.

CASE NO. 09cv1478-LAB (CAB)

ORDER DENYING *EX PARTE*
MOTION TO STRIKE
DEFENDANTS' MOTION TO
DISMISS

18 On November 3, 2009, Plaintiffs submitted pleadings indicating they were bringing a
19 noticed motion pursuant to Fed. R. Civ. P. 12(f) to strike Defendants' pending motion to
20 dismiss. The motion to dismiss ("Motion to Dismiss," Docket no. 13) was filed September
21 1, 2009 and is scheduled for hearing December 7, 2009. Instead of obtaining a hearing date
22 as required under Civil Local Rule 7.1(b), Plaintiffs selected the hearing date for the pending
23 Motion to Dismiss as the hearing date for their motion to strike (the "Motion to Strike") and
24 included that date in the caption as the hearing date.

25 Setting hearings on the Motion to Dismiss and the Motion to Strike on the same day
26 would disrupt the briefing schedule. The Motion to Strike was therefore accepted as an *ex*
27 *parte* motion. Defendants filed a brief in opposition (the "Opposition").

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1 Under Fed. R. Civ. P. 12(f), the Court has discretion either *sua sponte* or on the
2 motion of a party, to strike “an insufficient defense or any redundant, immaterial, impertinent,
3 or scandalous matter.” The purpose of a motion to strike is to “avoid the expenditure of time
4 and money that must arise from litigating spurious issues by dispensing with those issues
5 prior to trial.” *Sidney-Vinstein v. A. H. Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983).

6 In their Opposition, Defendants correctly point out the Federal Rules of Civil
7 Procedure do not provide for a motion to strike a motion to dismiss. See *Sidney-Vinstein*,
8 697 F.2d at 885 (holding that Rule 12(f) permits only the striking of pleadings). See also
9 Fed. R. Civ. P. 7(a) (defining “pleadings”). In addition, permitting Plaintiffs to make two
10 separate sets of arguments against the Motion to Dismiss would increase expense and
11 delay, defeating the purpose of a Motion to Strike.

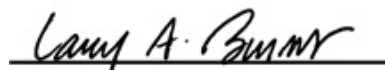
12 The Motion to Strike primarily sets forth Plaintiffs’ arguments against the Motion to
13 Dismiss. Plaintiffs may raise any arguments they may have in their opposition to the Motion
14 to Dismiss; as noted, the Motion to Strike is not the proper vehicle for doing so.

15 Liberally construing the Motion to Strike, Plaintiffs may also be arguing the Court
16 should exercise its authority under some other provision of law or under its inherent power
17 impose order and control its docket by striking procedurally improper motions. See
18 *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44–45 (1991) (explaining that courts’ inherent
19 power includes “the ability to fashion an appropriate sanction for conduct which abuses the
20 judicial process”). Plaintiffs argue the Motion to Dismiss includes scandalous, impertinent,
21 and immaterial arguments or accusations. (Mem. in Supp. of Motion to Strike, 12:20–19:3.)
22 The Court has reviewed these allegations and arguments and finds no basis for striking any
23 part of the Motion to Dismiss.

24 The Motion to Strike is therefore **DENIED**.

25 **IT IS SO ORDERED.**

26 DATED: November 18, 2009

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28 **HONORABLE LARRY ALAN BURNS**
United States District Judge